

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

Crl.MC.No. 2375 of 2006()

CC.284/2005 of CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA

PETITIONER: ACCUSED

REJI, S/O.ABRAHAM,
AGED 30 YEARS, MATTATHIL,
MUKKADAM, KONNATHADY VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.SAIBY JOSE KIDANGOOR

RESPONDENTS: COMPLAINANT

1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.
2. M/S.SUN PHARMA,
PHARMACEUTICALS WHOLE SALES,
THODUPUZHA, REP. BY POWER OF ATTORNEY HOLDER
T.R.RAJESH, THOTTIYIL HOUSE,
VANNAPPURAM KARA, THODUPUZHA.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 27/11/2006, ALONG WITH CRMC NO. 2380 OF 2006
CRMC NO. 2381 OF 2006 CRMC NO. 2383 OF 2006 CRMC NO. 2388 OF 2006
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.2375 of 2006, 2380 of 2006,
2381 of 2006, 2383 of 2006 & 2388 of 2006

Dated this the 27th day of November 2006

O R D E R

The petitioner, along with a co-surety had taken the accused on bail in five separate prosecutions under Section 138 of the Negotiable Instruments Act. The accused started absconding thereafter. The attempt made by the learned Magistrate to secure the presence of the accused did not fructify. Warrants were returned with the endorsement that the accused is absconding. In these circumstances, notice was ordered to the sureties. The co-surety had expired. Only the petitioner surety is available. The petitioner surety has not so far been able to produce the accused. Time was sought repeatedly and the learned Magistrate had indulgently granted such time. Proceedings under Section 446 Cr.P.C are now pending. Orders have not been passed in those proceedings. The petitioner, at this stage, filed identical applications in all the separate proceedings under Section 446 Cr.P.C against him praying that police may be directed to conduct an enquiry into the non-appearance of the accused and take effective steps .

2. There is not even a specific and vague suggestion that the accused may not be alive now. The applications filed by the petitioner

to direct the police to conduct an enquiry as to whether the accused is dead or not were dismissed by the learned Magistrate by the impugned common order. Aggrieved by the said order, the petitioner has come to this court with these five separate applications under Section 482 Cr.P.C. The accused person is released from judicial custody and entrusted to the sureties on the basis of their undertaking that they shall make the accused available before court. Even assuming that the accused is no more, it is certainly for the petitioner to urge that plea before the Magistrate in proceedings under Section 446 Cr.P.C. I do not want to express any final opinion on the acceptability of such plea. It is for the petitioner to place such materials before the court which is seized of the proceedings under Section 446 Cr.P.C to induce the requisite satisfaction at the mind of the court that the accused is no more and the petitioner's inability to produce him before the court, contrary to his undertaking earlier, is not wilful or contumacious. The Magistrate under Section 446 Cr.P.C will definitely consider the acceptability of that contention. I do not, at any rate, find any rhyme, reason or logic in the endless prayer to wait for return of the accused or to direct the police to conduct investigation as to whether the disappearance/absconding of the accused is on account of his death or not.

3. These Crl.M.Cs are in these circumstances dismissed but I may hasten to observe that the option of the petitioner to satisfy the learned Magistrate that there is nothing contumacious or culpable in his inability to produce the accused will not in any way be fettered by the dismissal of these Crl.M.Cs.

(R.BASANT, JUDGE)

jsr

Crl.M.C.Nos.2375/06,2380/06,
2381/06,2383/06 &2388/06

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006